

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

In Re: * **Chapter 13**
*
LESLIE McDANIEL, * **Bankruptcy Case No. 12-41231-JTL**
*
Debtor. *

**LESLIE McDANIEL, Individually
and as Representative of her
Bankruptcy Estate,**

Plaintiff,

vs.

**SUNTRUST BANK, SUNTRUST
MORTGAGE, INC., McCALLA
RAYMER, LLC., FOXFIRE ACRES,
INC., THE UNITED STATES OF
AMERICA, by and through THE
INTERNAL REVENUE SERVICE,
THE STATE OF GEORGIA
(Represented by the DEPART-
MENT OF REVENUE), THE
GROGAN GROUP, LLC d/b/a
GROGAN & GROGAN, and THE
COLUMBUS CONSOLIDATED
GOVERNMENT,**

Defendants.

ADVERSARY PROCEEDING

NO. 13-04013-JTL

**ANSWER OF THE UNITED STATES OF AMERICA TO
PLAINTIFF'S COMPLAINT FOR DECLARATORY JUDGMENT
AND LIEN AVOIDANCE, EQUITABLE SUBORDINATION,
SALE FREE AND CLEAR OF LIENS, AND
DAMAGES UNDER GEORGIA STATE LAW**

COMES NOW Defendant, United States of America, on behalf of its agency, the
United States Department of Treasury, Internal Revenue Service (hereinafter referred to

as “the Service”) responds to Plaintiff’s “Complaint for Declaratory Judgment and Lien Avoidance, Equitable Subordination, Sale Free and Clear of Liens, and Damages Under Georgia State Law” (hereinafter the “Complaint”), as follows:

AFFIRMATIVE DEFENSES

1. **The Complaint fails to state a claim upon which relief may be granted and should be dismissed because it does not allege that Plaintiff suffered any harm, resulting in any damages, for which the United States, through the Internal Revenue Service, would be liable.**

Plaintiff’s Complaint alleges certain actions against named multiple defendants involving the foreclosure of Plaintiff’s real property, the subject property in this Adversary, wherein only the IRS is named because of its lien against the subject property for taxes due the IRS. Plaintiff’s Complaint does not allege any particular allegation against the IRS wherein the IRS would be found liable for any damages. The only count relative to the IRS would be Count V: *Authorization for sale free and clear of liens and interests of all parties under 11 U.S.C. § 363(f)*. The IRS has a valid lien against the subject property which is the subject of this Adversary Proceeding, and would be affected by the sale of same, but that action would only occur at some point in the future, and it is determined at what amount, if any, would be available to satisfy the IRS’ lien. Nevertheless, Plaintiff’s Complaint fails to state, with particularity, a claim against the IRS upon which any relief would be granted. Consequently, Plaintiff’s Complaint should be dismissed.

2. The United States of America is immune from being sued; therefore, the Court lacks subject matter jurisdiction over the United States of America.

Sovereign immunity governs claims against the United States or its agencies, and the United States may be sued only to the extent that it has consented to be sued by statute. *United States v. Dalm*, 494 U.S. 596, 608 (1990); *Lehman v. Nakshian*, 453 U.S. 156, 160 (1991); *Preserve Endangered Areas of Cobb's History, Inc. v. United States Army Corps of Engineers*, 87 F.3d 1242 (11th Cir. 1996). Such a waiver must be explicitly and strictly construed in favor of the United States. *United States v. Nordic Village, Inc.*, 503 U.S. 30, 33 (1992). Where the United States has not consented to suit, the court must dismiss for lack of subject-matter jurisdiction. *Elias v. Connett*, 908 F.2d 521, 527 (9th Cir. 1990).

3. The Court lacks subject matter jurisdiction to award actual and punitive damages under 26 U.S.C. §7433.

The plain language of the Bankruptcy Code bars a bankruptcy court from awarding punitive damages against the United States. "The court may issue against a governmental unit an order, process of judgment under such sections..., including an order or judgment awarding money recovery, but not including an award of punitive damages." 11 U.S.C. § 106(a)(3). *See also, Jove Engineers, Inc. v. IRS*, 92 F.3d 1539, 1549 (11th Cir. 1996). Accordingly, any claim for punitive damages must be dismissed for lack of subject matter jurisdiction.

The United States of America responds to the factual allegations stated in the specifically enumerated paragraphs of the Complaint, as follows:

1.

The United States of America denies the assertions contained in Paragraph One of Plaintiff's Complaint as it relates to claims against the Government in this Adversary Proceeding.

2.

The United States of America denies the assertions contained in Paragraph Two of Plaintiff's Complaint as it relates to claims against the Government in this Adversary Proceeding.

3.

The United States of America is without sufficient information to either admit or deny the assertions contained in Paragraph Three of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

4.

The United States of America admits the allegation contained in Paragraph Four of Plaintiff's Complaint.

5.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraphs Five, Six, Seven and Eight (5-8) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

6.

The United States of America admits the allegation contained in Paragraph Nine (9) of Plaintiff's Complaint.

7.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraphs Ten, Eleven, and Twelve (10-12) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

8.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Thirteen (13) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

9.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Fourteen (14) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

10.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Fifteen (15) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

11.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Sixteen (16) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

12.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Seventeen (17) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

13.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Eighteen (18) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

14.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Nineteen (19) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

15.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Twenty (20) of Plaintiff's Complaint.

However, to the extent that a response is required, the United States of America denies same.

16.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Twenty-One (21) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

17.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Twenty-Two (22) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

18.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Twenty-Three (23) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

19.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Twenty-Four (24) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

20.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Twenty-Five (25) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

21.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Twenty-Six (26) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

22.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Twenty-Seven (27) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

23.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Twenty-Eight (28) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

24.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Twenty-Nine (29) of Plaintiff's Complaint.

However, to the extent that a response is required, the United States of America denies same.

25.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Thirty (30) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

26.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Thirty-One (31) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

27.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Thirty-Two (32) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

28.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Thirty-Three (33) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

29.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Thirty-Four (34) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

30.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Thirty-Five (35) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

31.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Thirty-Six (36) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

32.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Thirty-Seven (37) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

33.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Thirty-Eight (38) of Plaintiff's Complaint.

However, to the extent that a response is required, the United States of America denies same.

34.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Thirty-Nine (39) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

35.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Forty (40) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

36.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Forty-One (41) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

37.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Forty-Two (42) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

38.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Forty-Three (43) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

39.

The United States of America admits the allegation contained in Paragraph Forty-Four (44) of Plaintiff's Complaint to the extent that it relates to the United States of America, by and through the Internal Revenue Service. The IRS admits to holding a federal tax lien against the subject property which is in dispute in this Plaintiff's Adversary Proceeding. Further, the United States is without sufficient information to either admit or deny the remaining allegations contained in Paragraph Forty-Four (44) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

40.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Forty-Five (45) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

41.

The United States of America denies the allegation contained in Paragraph Forty-Six (46) of Plaintiff's Complaint insofar as it relates to the United States of America, by and through the Internal Revenue Service. Further, the United States is without sufficient information to either admit or deny the allegations contained in Paragraph

Forty-Six (46) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

42.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Forty-Seven (47) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

43.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Forty-Eight (48) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

44.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Forty-Nine (49) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

45.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Fifty (50) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

46.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Fifty-One (51) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

47.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Fifty-Two (52) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

48.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Fifty-Three (53) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

49.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Fifty-Four (54) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

50.

The United States of America admits the allegation contained in Paragraph Fifty-Five (55) of Plaintiff's Complaint.

51.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Fifty-Six (56) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

52.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Fifty-Seven (57) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

53.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Fifty-Eight (58) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

54.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Fifty-Nine (59) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

55.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Sixty (60) of Plaintiff's Complaint.

However, to the extent that a response is required, the United States of America denies same.

56.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Sixty-One (61) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

57.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Sixty-Two (62) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

58.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Sixty-Three (63) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

59.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Sixty-Four (64) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

60.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Sixty-Five (65) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

61.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Sixty-Six (66) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

62.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Sixty-Seven (67) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

63.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Sixty-Eight (68) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

64.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Sixty-Nine (69) of Plaintiff's Complaint.

However, to the extent that a response is required, the United States of America denies same.

65.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Seventy (70) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

66.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Seventy-One (71) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

67.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Seventy-Two (72) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

68.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Seventy-Three (73) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

69.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Seventy-Four (74) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

70.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Seventy-Five (75) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

71.

The United States of America denies the allegation contained in Paragraph Seventy-Six (76) of Plaintiff's Complaint.

72.

The United States of America denies the allegation contained in Paragraph Seventy-Seven (77) of Plaintiff's Complaint as it relates to the IRS' lien against the subject property.

73.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Seventy-Eight (78) of Plaintiff's Complaint as it relates to creditor/defendant, the United States of America, by and through the Internal Revenue Service, and whether it is in the best interest of the estate. However, to the extent that a response is required, the United States of America denies same.

74.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Seventy-Nine (79) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

75.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Eighty (80) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

76.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Eighty-One (81) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

77.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Eighty-Two (82) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

78.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Eighty-Three (83) of Plaintiff's Complaint.

However, to the extent that a response is required, the United States of America denies same.

79.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Eighty-Four (84) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

80.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Eighty-Five (85) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

81.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Eighty-Six (86) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

82.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Eighty-Seven (87) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

83.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Eighty-Eight (88) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

84.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Eighty-Nine (89) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

85.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Ninety (90) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

86.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Ninety-One (91) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

87.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Ninety-Two (92) of Plaintiff's Complaint.

However, to the extent that a response is required, the United States of America denies same.

88.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Ninety-Three (93) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

89.

The United States of America is without sufficient information to either admit or deny the allegations contained in Paragraph Ninety-Four (94) of Plaintiff's Complaint. However, to the extent that a response is required, the United States of America denies same.

90.

The United States of America denies any and all allegations of Plaintiff's Complaint not heretofore admitted, denied, or otherwise controverted.

WHEREFORE, having answered the Debtor's/Plaintiff's Complaint, the United States of America respectfully requests this Court denies Plaintiff's prayer for relief and grant such other relief deemed just and proper.

Respectfully submitted, this 5th day of December, 2013.

MICHAEL J. MOORE
United States Attorney

/s/ Barbara G. Parker

Barbara G. Parker
Assistant United States Attorney
Georgia Bar No. 561750

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CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2013, I electronically filed the foregoing **ANSWER OF THE UNITED STATES OF AMERICA, ON BEHALF OF THE U.S. DEPARTMENT OF TREASURY, INTERNAL REVENUE SERVICE, TO PLAINTIFF'S COMPLAINT FOR DECLARATORY JUDGMENT AND LIEN AVOIDANCE, EQUITABLE SUBORDINATION, SALE FREE AND CLEAR OF LIENS, AND DAMAGES UNDER GEORGIA STATE LAW** with the Clerk of the Court by using the CM/ECF system. I also certify that the following parties have been served on this date either by electronic means of the Court or via United States Mail with proper postage affixed thereto.

Fife M. Whiteside
Attorney for Plaintiff
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Dated: December 5, 2013

MICHAEL J. MOORE
United States Attorney

/s/ Barbara G. Parker

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